

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring an unpatented mining claim abandoned and void. N MC 127894.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

3. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Walter D. Cosdon, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Walter D. Cosdon appeals from a decision dated April 21, 1981, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Mellvina lode mining claim, N MC 127894, abandoned and void because of appellant's failure to timely file evidence of assessment work performed or a notice of intention to hold the mining claim for the assessment year ending September 1, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a). The claim was located in 1948. The decision indicates the notice of location was filed properly for recordation with BLM on October 15, 1979. ^{1/} The evidence of assessment work (proof of labor) for the assessment year ending September 1, 1979, was actually received by BLM on June 2, 1981.

[1] The statute provides in pertinent part:

Sec. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

^{1/} The record is not clear as to the date of filing of the copy of the location notice. The copy is date stamped Oct. 29, 1979. The receipt for the service fee is dated Nov. 13, 1979. The BLM decision of Apr. 21, 1981, states the date of filing of the claim for record in BLM is Oct. 15, 1979.

(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner * * *.

The regulations, 43 CFR 3833.1-2 and 3833.2-1 merely replicate the statute.

Appellant contends he was never informed of the need to file a copy of his proof of labor for 1979 on or before October 22, 1979. He also expresses dismay that BLM informed him that his claim was in order following his filing of a proof of labor for the assessment year ending September 1, 1980.

In a letter dated October 18, 1979, BLM advised appellant that recordation of an unpatented mining claim required a copy of the notice of location as recorded in the county where situated, legal description of the situs by section, township, and range or indicated on a map sufficient to identify the claim on the ground, a statement as to present ownership of the claim, and a nonrefundable service fee of \$5 per claim. The letter did not mention the need for filing any proof of labor. The letter did indicate that a copy of the pertinent regulations in 43 CFR Part 3833 were enclosed, so that appellant did have the information regarding the necessity for filing his proof of labor. In any event, reliance upon erroneous or incomplete information provided by employees of BLM cannot create any rights not authorized by law. John Plutt, Jr., 53 IBLA 313 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Under the facts of this case, appellant owned a claim located before October 21, 1976, and considered by BLM as having been timely recorded. Under FLPMA and its implementing regulations, since the claim was located prior to October 21, 1976, and recorded in 1979, evidence of appellant's assessment work was due on or before October 22, 1979, or before December 31, 1979, whichever is the earlier of the dates described in the regulation. The Board has repeatedly held that where these required documents are not timely filed, the mining claim is properly declared abandoned and void.

[2] Filing of the documents in a local county recorder's office does not obviate the need for strict compliance with the time schedule outlined in the statute and the regulations.

[3] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp., v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge